

proposal and to adopt rules specifically to ensure that satellite carriers have sufficient input in the siting process. DIRECTV also urges the Commission to adopt its list of minimum criteria necessary for the siting of an alternate receive facility and to provide a twelve month grace period from the time the site is “agreed upon” until the commencement of operation using that site. As DIRECTV explained in its initial comments, this grace period is necessary for the planning and construction of such facility.<sup>59</sup>

## 2. Multiple Local Receive Facilities.

The Network Affiliates and Public Television urge the Commission to adopt geographic guidelines that require local receive facilities to be sited within fifty miles of each station’s city of license, or within each station’s Grade B contour.<sup>60</sup> While the Network Affiliates observe that the Commission has adopted geographic guidelines in the cable context,<sup>61</sup> they fail to provide any reasonable rationale for imposing the same requirement on satellite carriers. They argue only that the requirement would ensure that smaller stations in more remote locations would not be forced to bear excessive costs to transport their signals to the designated receive facility.

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<sup>59</sup> DIRECTV Comments at 27; BellSouth concurs that if stations invoke the alternative site provisions of Section 338(b)(1), additional time will be required before the satellite carrier can realistically commence carriage of the stations. BellSouth Comments at 10. DIRECTV observes, however, that BellSouth asks for significantly less time than twelve months. DIRECTV notes that BellSouth has immediate access to points of presence and telecommunications services in the markets it intends to serve and that this will substantially reduce the amount of time BellSouth will require to establish new receive facilities.

<sup>60</sup> Network Affiliate Comments at 10; Public Television Comments at 13.

<sup>61</sup> 47 C.F.R. § 76.55(b).

DIRECTV urges the Commission to reject these proposals, which completely distort the allocation of burdens in Section 338. The statute defines “local receive facility” as “the reception point in each local market which a satellite carrier designates for the delivery of the signal of the station for purposes of retransmission.”<sup>62</sup> The statute permits broadcasters to require carriers to establish new facilities when they satisfy the fifty percent threshold. Thus, the SHVIA’s carriage obligation is already facially onerous: it requires satellite carriers to allow must carry broadcast stations input in decision-making processes for the siting of facilities for which satellite carriers must bear all construction costs. If the Commission were to adopt the broadcasters’ proposals, satellite carriers could effectively be required to establish multiple facilities in each market. Indeed, the geographic guidelines proposed by certain broadcasters suggest that a satellite carrier should construct a receive facility for *each individual broadcaster whose Grade B signals do not overlap*.

The text of the SHVIA contains no support for such guidelines. Nor does it restrict satellite carriers’ discretion to designate facilities sites. Indeed, the broadcasters point to no statutory reference or legislative history indicating that Congress intended to require satellite carriers to construct multiple receive facilities per market. Given the time and expense involved in the construction of such a facility, the Commission should permit satellite carriers as much flexibility as possible to meet the onerous statutory requirements. The Commission should reject proposals to create additional obligations on satellite carriers that have no bearing in the statute or to distort the cost burdens specifically designated by the statute.

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<sup>62</sup> 47 U.S.C. § 338(h)(2).

### 3. Consent To Designated Receive Facilities.

Section 338(b)(1) makes clear that some formal process is required for broadcasters to agree upon the establishment of alternative facilities. The broadcasters essentially ask the Commission to presume that their burden is met unless a satellite carrier can prove otherwise. Specifically, the NAB asks the Commission to place the burden on the satellite carrier to “obtain written consents from each relevant station to establish that a particular [must carry] station has agreed to a non-local receive facility.”<sup>63</sup> The NAB also suggests that the satellite carrier be required to provide those written consents to any stations that have not agreed to the site.<sup>64</sup>

Such requirements would impermissibly alter the allocation of burdens established by Congress, however, and should be rejected. As DIRECTV indicated in its initial comments, Congress placed the burden on television broadcast stations to agree upon an “acceptable” facility. Instead of shifting the statutory burden to the satellite carriers to prove that the broadcasters consented, the Commission should adopt BellSouth’s proposal: a station should be deemed to have given consent to the satellite carrier’s designated receive facility if the station does not notify the satellite carrier in writing within thirty days of the satellite provider’s notice that the station votes against the receive location.<sup>65</sup> In addition, the Commission should adopt rules prohibiting local television stations from unreasonably withholding consent to a regional receive facility.<sup>66</sup> These proposals are consistent with the statutory allocation of burdens in Section 338(b)(1).

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<sup>63</sup> NAB Comments at 12.

<sup>64</sup> *Id.*

<sup>65</sup> BellSouth Comments at 7.

<sup>66</sup> *Id.* at 17.

#### 4. Hardship Cases.

The broadcasters generally argue that stations in the minority of a local receive facility siting decision should have some form of remedy, although the statute does not provide for one. Public Television urges the Commission to allow such stations to file a complaint with the Commission. “In cases of hardship,” Public Television also asks the Commission to order the satellite carrier to construct an additional or alternative local receive facility to accommodate such station(s).<sup>67</sup> The Network Affiliates’ argue that the Commission should require satellite carriers to subsidize the cost of delivering a good quality signal to the designated receive facility if the broadcasters do not achieve the fifty percent threshold necessary to require alternative siting or if stations in the minority do not agree with the location of the facility.<sup>68</sup>

The legislation provides no justification for such alternatives. To the contrary, Section 338(b)(1) expressly provides that broadcasters bear the costs associated with delivering a good quality signal to the satellite carrier’s receive facility. The statute does not provide remedies for stations that do not agree to the siting of a facility, but do not meet the fifty percent threshold. Nor does the statute contain an exemption from the requirement to bear the costs of delivering the signal in the event that the broadcast station does not agree to the site. Finally, there is no justification, statutory or otherwise, for the Commission to require a satellite carrier to erect an additional receive facility merely to accommodate a broadcaster in “hardship cases.” Such proposals, if adopted, would vastly expand the already onerous burdens contained in Section 338. The Commission should therefore reject these proposals.

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<sup>67</sup> Public Television Comments at 14.

<sup>68</sup> Network Affiliate Comments at 11.

## **V. CARRIAGE OF DUPLICATING SIGNALS AND NON-COMMERCIAL EDUCATIONAL STATIONS**

The definition of “signal duplication” and the limitations on carriage of non-commercial educational stations (“NCE”) provide additional examples of concepts that are part of the Commission’s cable compulsory carriage regime, but that must be tailored in order to be effective in the satellite context. While the Commission cannot promulgate rules that will fully alleviate the substantial duplication in programming that will result from the carriage obligation contained in Section 338, these concepts are nonetheless important. Proper and sensible implementation of these limitations on broadcasters’ carriage rights will help preserve the diverse variety of programming satellite carriers are able to offer their subscribers.

### **A. Substantial Duplication Should Be Defined Broadly And Should Apply To Both Commercial And Noncommercial Educational Television Stations.**

Although the broadcasters urge the Commission to import the rules it has adopted in the cable context concerning substantial duplication of local broadcast signals,<sup>69</sup> several commenters recognize that there are practical differences between cable and satellite delivery systems that require a broader application of substantial duplication in the satellite context. Along with DIRECTV, BellSouth recognizes that because satellite carriers will have to carry all eligible stations in an area as large as a DMA, there is a far greater potential that signals will be wastefully duplicative.<sup>70</sup> Recognizing that carriage of duplicative channels will reduce the

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<sup>69</sup> NAB Comments at 15.

<sup>70</sup> BellSouth Comments at 20.

diversity of programming available to consumers, the satellite carriers make useful proposals to limit the obligation in a sensible manner.

In its initial comments, DIRECTV proposed that the definition of “substantial duplication” include identical programming, whether broadcast simultaneously or not, of either fifty percent or more of a television broadcast station’s total weekly programming or fifty percent or more of its prime-time programming.<sup>71</sup> In addition, DIRECTV urged the Commission to define “television network” to include both the traditional television networks as well as other channels carried nationally.<sup>72</sup> Satellite carriers also proposed that the Commission apply standards for substantial duplication to NCE stations as well as commercial stations,<sup>73</sup> and to “satellite television stations” to the extent that the Commission, by rule, grants them carriage rights.<sup>74</sup> Consistent with these proposals, the Commission should adopt rules to strictly enforce the substantial duplication concept to ensure that satellite carriers’ limited capacity is utilized in a manner that provides the greatest diversity of programming.<sup>75</sup>

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<sup>71</sup> DIRECTV Comments at 35. BellSouth argued that the definition of “substantial duplication” applicable to commercial television stations carried by satellite carriers pursuant to Section 338(a) should be satisfied at a thirty percent threshold, rather than a fifty percent threshold. BellSouth Comments at 21.

<sup>72</sup> *Id.* at 35-36.

<sup>73</sup> DIRECTV Comments at 35-36; LTVS Comments at 9.

<sup>74</sup> DIRECTV maintains that satellite television stations do not fall within the SHVIA’s definition of “television broadcast station” and therefore may not assert carriage rights in the first instance. *See* DIRECTV Comments at 13-14.

<sup>75</sup> DIRECTV recognizes, of course, that an unlimited compulsory carriage requirement in every DMA where local broadcast channels are provided will entail a substantial amount of programming regardless of the rules adopted by the Commission.

**B. The Commission Should Reject Any Proposals To Expand The Carriage Obligation Based On Anticipated Increases In Satellite Capacity.**

With Section 338(c)(2), Congress sought to limit satellite carriers' obligation to carry NCE stations so that the obligation would be comparable to the requirements imposed on cable operators pursuant to Section 615. Despite the limiting language of Section 338(c)(2), Public Television argues that the provision should be interpreted as requiring carriage of multiple NCE stations per market. Attempting to obscure the problem of substantial duplication by public televisions stations, Public Television notes that some secondary stations provide their own unique programming and complement the primary stations' programming.<sup>76</sup> Finally, in direct conflict with the limiting language of Section 338(c)(2), Public Television urges the Commission to adopt carriage requirements that *anticipate* vast increases in satellite capacity and local delivery capabilities.<sup>77</sup> The statute provides compelling reasons for the Commission to reject these proposals in their entirety.

Congress directed the Commission *expressly* to limit carriage of NCE stations. To the extent that they offer duplicative programming, these stations will make excessive demands on the limited capacity of satellite systems, and will severely impact a satellite carrier's ability to provide local channel service in additional markets. For these reasons, it is imperative that the Commission apply substantial duplication standards to NCE stations, and place an express cap on the number of NCE stations a satellite carrier must carry.<sup>78</sup> To this end, several commenters proposed that the carriage of local NCE stations be incorporated into satellite carriers' standing

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<sup>76</sup> Public Television Comments at 17.

<sup>77</sup> *Id.* at 19.

<sup>78</sup> DIRECTV Comments at 38-39; BellSouth Comments at 24.

public interest programming obligation.<sup>79</sup> DIRECTV proposed such a cap.<sup>80</sup> Echostar proposed a similar cap.<sup>81</sup> Because this general approach will satisfy Congress' objective of limiting the burden posed by Section 338, DIRECTV urges the Commission to adopt express limitations on the channel capacity satellite carriers must devote to the carriage of NCE stations.

DIRECTV also urges the Commission to reject Public Television's proposal to adopt expansive NCE carriage requirements in anticipation of hypothetical and dramatic increases in satellite capacity. Extrapolating from the number of frequencies allocated to the major DBS operators, Public Television argues that both providers could make 729 channels available for the carriage of local channels without any reduction in capacity for national channels.<sup>82</sup> Public Television argues further that, with the assistance of additional satellites in other frequency bands, the satellite carriers could carry every local channel in the top 68 markets.<sup>83</sup>

There can be no better way to deter satellite carriers from offering local channels in all but the largest markets than to impose carriage requirements that today's systems cannot meet. Public Television's extrapolation presupposes that DIRECTV and EchoStar intend to reconfigure capacity on satellites at each orbital location. If DIRECTV were to follow Public Television's proposal, all receivers used by DIRECTV's subscribers would have to be redesigned and replaced with receivers that have the capability of receiving signals from DIRECTV satellites in

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<sup>79</sup> BellSouth Comments at 74; DIRECTV Comments at 38-39; Echostar Comments at 5. Even public television stations agree that satellite carriers should be able to count the carriage of local noncommercial educational stations toward the 4% set-aside for such programming. *See, e.g.*, Comments of Detroit Educational Television Foundation at 4.

<sup>80</sup> DIRECTV Comments at 39.

<sup>81</sup> EchoStar Comments at 5-6.

<sup>82</sup> Public Television Comments at 20.

<sup>83</sup> *Id.* at 20-21.



all three orbital locations. If, in the alternative, DIRECTV were required to upgrade 18 of its available frequencies on the satellites from which existing receivers are capable of receiving programming, the bulk of DIRECTV's national programming would be replaced with local channels. While DIRECTV intends to make as many frequencies available for local channel service as possible through its use of the spot beam satellite it intends to launch in time to meet its expected carriage obligations, DIRECTV does not contemplate reducing the attractive national programming packages that have made it the nation's leading provider of DBS services. Nor does DIRECTV intend to require its almost 9 million subscribers to procure new equipment. For these reasons, the Commission should take into account satellite carriers' current capacity limitations and place strict limits on the obligation to carry NCE stations in accordance with Section 338(c)(2).

## **VI. CHANNEL POSITIONING**

The broadcasters generally assert that satellite carriers must provide the signals of all local television stations on contiguous channels, regardless of whether the stations are carried pursuant to Section 338 or Section 325.<sup>84</sup> As DIRECTV explained in its initial comments, there are technical limits on DIRECTV's ability to ensure that local channels are positioned "contiguously." While new receivers are capable of displaying local channel numbers in the range of 0-99, subscribers with legacy receivers must utilize different channel numbering

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<sup>84</sup> ALTV Comments at 12-14; Network Affiliates at 15; Public Television Comments at 26-27.

conventions to view local stations. DIRECTV nonetheless generally intends to position stations carried pursuant to retransmission consent as well as channels carried pursuant to the must carry obligation in these “channel neighborhoods.” To the extent that it is technically feasible, non-local channels will not be interspersed between local broadcast channels carried pursuant to Section 338 or those carried pursuant to retransmission consent agreements. Thus, there is no reason for broadcasters electing must carry to fear discrimination through the use of an “unattractive” channel position. All local channels will be carried in a manner that is “convenient and practically accessible for consumers.” The Commission should therefore adopt a flexible approach that incorporates the technical limitations of existing equipment.

In their discussion of Section 338(d), the broadcasters advocate a host of non-discrimination measures to protect must carry stations. DIRECTV believes that the statutory language is clear and does not permit the Commission to develop expansive rules to implement its mandate. First, the broadcasters argue that satellite carriers must provide all local broadcast channels to subscribers in a single channel package, which includes retransmission consent stations.<sup>85</sup> ALTV likens this proposed obligation to the requirement that cable operators carry all broadcast stations on the basic tier.<sup>86</sup> The SHVIA, however, does not provide for any form of rate regulation and the Commission therefore lacks authority to impose rate regulation on satellite carriers.

Second, the broadcasters ask the Commission to prohibit satellite carriers from discriminating against must carry stations by requiring subscribers to purchase additional

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<sup>85</sup> ALTV Comments at 16.

<sup>86</sup> ALTV Comments at 18; Public Television Comments at 29.

equipment to access must carry channels.<sup>87</sup> Again, the SHVIA does not provide any authority for the Commission to regulate the sale of consumer electronics equipment used to receive DBS programming.

Finally, the broadcasters argue that the Commission should incorporate into its satellite carriage regime non-discrimination requirements from the rules governing Open Video Systems (“OVS”).<sup>88</sup> These proposals would prevent satellite carriers from using navigational guides and menus to control access to video programming.<sup>89</sup> Once again, the SHVIA does not provide authority for the Commission to restrict DBS providers’ use of navigational guides or menus. Accordingly, the Commission should refrain from expanding the obligations set forth in Section 339(d).

## **VII. CONTENT TO BE CARRIED**

As DIRECTV explained in its initial comments, there are severe technical limitations on satellite carriers’ ability to carry certain portions of a broadcast television signal.<sup>90</sup> DIRECTV’s system, for example, was not designed to support any portion of a broadcast signal other than the primary video, audio, and line 21 of the Vertical Blanking Interval (“VBI”).<sup>91</sup> In order to retrofit

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<sup>87</sup> NAB Comments at 15.

<sup>88</sup> Public Television Comments at 29-31; Network Affiliate Comments at 15-18.

<sup>89</sup> Public Television Comments at 27-31; Network Affiliate Comments at 18.

<sup>90</sup> DIRECTV Comments at 41-43.

<sup>91</sup> As DIRECTV noted in its initial comments, DIRECTV’s system was designed to support closed captioning information included in line 21 of the VBI. Additionally, to address concerns expressed by the NAB, NAB Comments at 19, DIRECTV’s system accommodates “TSID” data and extended service packets on line 21 in their entirety. Indeed, DIRECTV strongly encourages television stations it carries to transmit TSID data.

DIRECTV's system to accommodate additional material on the VBI or anything but the station's primary video and audio signals, DIRECTV would be required to invest billions of dollars in redesigning and replacing all DIRECTV receivers currently in use by its almost 9 million subscribers, and would have to modify all encoding and processing equipment as well.

For the same reasons, the Commission should adopt a specific definition for "primary video." While a few commenters argue that there is no need to adopt a specific definition for "primary video" in the satellite context because the Commission has not done so in the cable context,<sup>92</sup> the immense differences between the systems used by cable operators and satellite carriers warrant different treatment in this case. Satellite systems, which utilize MPEG compression, were not designed to accommodate ancillary data that may be imbedded in the broadcast signal. It is clear that some broadcasters commenting in this proceeding grossly underestimate the impediments to satellite carriage of additional material that may be imbedded in television broadcast signals.<sup>93</sup>

Notwithstanding their misconceptions concerning satellite carriers' technical capabilities, most broadcasters agree that transmission of material in the broadcast signal should be considered "technically feasible" for satellite carriers, as it is for cable carriers, only if "nominal costs, additions or changes of equipment are necessary."<sup>94</sup> Satellite carriers agree that the Commission should import its definition for "technically feasible" to prevent any requirement

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<sup>92</sup> Public Television Comments at 23; NCTA Comments at 7.

<sup>93</sup> Public Television Comments at 24 ("[T]here is no technical impediment to the carriage of VBI material over satellite; it is simply a question of capacity, and not much at that."); *see also* LTVS Comments at 25; NAB Comments at 18.

<sup>94</sup> Public Television Comments at 24 (quoting Cable Must Carry Report and Order, 8 FCC Rcd at 2986).

that satellite carriers incur large expenses to adapt their systems to carry certain portions of broadcast signals they were not designed to carry. Specifically, BellSouth acknowledges that its system, like DIRECTV's system, cannot accommodate VBI content other than closed captioning, and will require substantial modification and significant expense if required to do so.<sup>95</sup> Thus, there is broad agreement among the commenters that the Commission should utilize its definition of "technically feasible" in the satellite context.

## **VIII. MATERIAL DEGRADATION**

There are several factors distinguishing cable carriage from satellite carriage that must be considered prior to the implementation of any rules concerning material degradation of a satellite carrier's signal. If one channel supplied to an MPEG encoder is noisier than the others, it will demand more capacity and cause deterioration to other channels. For satellite systems to compress signals efficiently, all channels must be supplied to an MPEG encoder with high signal quality and low noise. In addition, satellite systems use digital transmission, and as a result, cable standards will not be of much use in determining digital picture quality. The Commission must acknowledge these differences between satellite and cable and should defer implementation of standards for material degradation until more research is available concerning the effects of compression.

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<sup>95</sup> BellSouth Comments at 25.

**A. The Commission Should Recognize The Link Between Signal Quality Standards And Material Degradation On Satellite Systems Utilizing Compression Technologies.**

DIRECTV notes at the outset that the signal quality standards the Commission sets for broadcasters are inextricably linked to any technical standards the Commission might adopt to govern retransmission of local broadcast signals by satellite carriers. DIRECTV agrees with the broadcasters' basic premise: satellite carriers should use good engineering practices and appropriate equipment to guard against degradation of the local broadcast signal received at the local receive facility and delivered to satellite subscribers.<sup>96</sup> However, if satellite carriers are required to carry broadcast signals of substandard quality, as many broadcasters argue,<sup>97</sup> even this basic premise will be violated. Good engineering practices do not permit carriage of even one substandard quality signal because that signal will degrade every other signal on the transponder.

A few commenters argue that the Commission should impose technical standards that provide parity between broadcast television channels carried pursuant to Section 338 with any other channels carried on the satellite system.<sup>98</sup> Public Television urges the Commission to adopt a fixed standard of quality based on today's analog broadcast signal quality, rather than set a fixed compression ratio.<sup>99</sup> NAB argues that the Commission should require satellite carriers to carry must carry stations with quality parameters measured in bit/error rates, bit allocation, and

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<sup>96</sup> Network Affiliate Comments at 21.

<sup>97</sup> *See supra* Section IV.A.

<sup>98</sup> NAB Comments at 20; Public Television Comments at 25.

<sup>99</sup> Public Television Comments at 25.

carrier-to-noise ratios.<sup>100</sup> While general parameters concerning good engineering practices and technical feasibility may be imported from the cable context for purposes of assessing material degradation, analog standards should not be used to assess degradation in signals carried on digital satellite systems.<sup>101</sup> DIRECTV urges the Commission to refrain from adopting specific standards to measure or define “material degradation” for purposes of satellite carriers until industry committees have made more progress in solving the problem of objectively measuring video impairment through compression systems.

**B. The Comments Indicate Broad Support For Allowing Satellite Carriers Flexibility In Their Use of Compression Technologies.**

Several commenters, including the broadcasters, agree with DIRECTV that the Commission should refrain from adopting technical standards for satellite retransmission of broadcast signals at this time.<sup>102</sup> These commenters note that any standards the Commission adopts might prevent beneficial innovations.<sup>103</sup> While one commenter argues that the Commission should prohibit outright the use of any technical means of enhancing capacity that may degrade picture quality,<sup>104</sup> this argument lacks merit. Recognizing that satellite carriers’

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<sup>100</sup> NAB Comments at 20.

<sup>101</sup> Moreover, as EchoStar observes, it would be absurd for the Commission to “impose detailed and exacting standards in the satellite context when households receiving a signal of Grade B intensity as currently defined are deemed to receive a sufficiently good signal and therefore are ineligible for distant satellite service, no matter if the signal happens to be unrecognizably distorted by ghosting.” EchoStar Comments at 8.

<sup>102</sup> Comments of BellSouth Comments at 25-26; Comments of Home Box Office at 2-3; Network Affiliates at 22; LTVS Comments at 29.

<sup>103</sup> BellSouth Comments at 25-26; Comments of Home Box Office at 3.

<sup>104</sup> ALTV Comments at 34-35.

provision of service to local markets across the nation directly relates to the efficient use of limited spectrum resources, Congress wisely directed the Commission to allow satellite carriers flexibility in their use of compression, reformatting and similar technologies in order to meet their carriage obligations.<sup>105</sup> Accordingly, the Commission should foster technological innovation and the efficient use of allocated spectrum by rejecting unsupported proposals to prohibit certain technologies.

## **IX. DIGITAL TELEVISION**

In its initial comments in this proceeding, DIRECTV questioned the Commission's authority to promulgate any rules mandating carriage of broadcasters' digital signals.<sup>106</sup> Several commenters have echoed this concern. Indeed, the Commission itself notes that Congress purposefully refrained from further consideration of the issue when it enacted the SHVIA.<sup>107</sup> Most commenters agree that the Commission should refrain from imposing a dual carriage obligation during the transition from analog to digital broadcasting.<sup>108</sup> The commenters question the Commission's statutory authority to adopt a dual carriage requirement, and note that the

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<sup>105</sup> Conference Report at 102.

<sup>106</sup> DIRECTV Comments at 45-49.

<sup>107</sup> Notice at ¶ 44.

<sup>108</sup> DIRECTV Comments at 46-49; NCTA Comments at 8; SBCA Comments at 10; Echostar Comments at 11; BellSouth Comments at 27; Comments of Home Box Office at 4.



statute expressly limits the carriage of duplicate signals.<sup>109</sup> They also question the constitutionality of such requirements.<sup>110</sup>

In addition to the apparent lack of authority or statutory basis to impose a digital carriage obligation on satellite carriers, the comments clearly demonstrate that it is premature for the Commission to adopt such a requirement. The commenters make clear that the obligation would be inordinately burdensome to the satellite industry yet, at the same time, will fail to further the Commission's goals concerning the transition from analog to digital broadcasting.<sup>111</sup> They agree that such a requirement would significantly decrease the number of markets receiving local broadcast channel service and would effectively prevent satellite carriers from entering smaller markets. Most importantly, however, the commenters agree that the Commission should let the marketplace resolve the digital carriage issues rather than subject satellite carriers to a dual carriage requirement.<sup>112</sup> There is little certainty as to how broadcasters will utilize their digital spectrum and which service offerings will be adopted by consumers. Simply stated, the Commission presently lacks the authority to mandate digital signal carriage, as well as the facts necessary to make an informed judgment concerning satellite carriage of digital signals during the transition period or thereafter.

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<sup>109</sup> DIRECTV Comments at 46; NCTA at 8.

<sup>110</sup> Comments of the Satellite Broadcasting and Communications Association at 9 ("SBCA Comments").

<sup>111</sup> BellSouth Comments at 27; Echostar Comments at 11; DIRECTV Comments at 47.

<sup>112</sup> SBCA Comments at 11; DIRECTV Comments at 47-48.

A few commenters nonetheless suggest that the Commission should impose some version of a digital carriage requirement immediately. Another commenter argues for an expansive digital carriage requirement. DIRECTV addresses each of these proposals below and urges the Commission to reject proposals that impermissibly expand satellite carriers' obligations under Section 338 and to refrain from imposing any digital carriage requirement on satellite carriers at this time.

Certain broadcasters argue that the Commission should allow broadcast stations asserting carriage rights to select which signal the satellite carrier must carry. For example, Paxson proposes that a station be allowed to elect mandatory carriage rights for its analog signal until the end of the DTV transition period, but if the station initiates digital broadcasting prior to that date, Paxson proposes that the station be allowed to elect between mandatory carriage of its analog signal or its digital signal(s).<sup>113</sup> In addition, Paxson argues that the Commission should require satellite carriers to carry all of the station's programming streams and to position the streams sequentially following the broadcaster's primary channel. To this end, Paxson proposes a detailed phase-in for must carry of digital multicast programming services.<sup>114</sup> Public Television also asks the Commission to allow stations to substitute digital for analog signals during the transition period. However, Public Television grossly misconstrues the technical parameters required for carriage of DTV signals – essentially arguing that DBS operators receiving digital signals could effortlessly pass-through the digital signal provided by the broadcaster.<sup>115</sup> Noting that each of these proposals severely underestimates the satellite capacity digital multicasting

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<sup>113</sup> Paxson Comments at 9-10.

<sup>114</sup> *Id.* at 10-12.

<sup>115</sup> Public Television Comments at 32.

will require, DIRECTV maintains that the Commission should reject any requests to expand the carriage obligation to include digital signals at this time.

Some broadcasters support what they term a “carry one – carry all” approach for satellite carriage of digital signals. ALTV argues that if a satellite carrier agrees to carry one local station’s digital signal, then it should be required to carry all digital signals provided by local stations in that market.<sup>116</sup> To the extent that the Commission imposes a digital carriage obligation on satellite carriers now, rather than after issuance of the cable rules, NAB agrees that this is the approach it should take.<sup>117</sup> Each argues that such an application of the carriage requirement would avoid imposing certain costs on satellite carriers, because the obligation would only take effect if the satellite carrier already demonstrated its ability to carry broadcasters’ digital signals. While DIRECTV agrees with the NAB that it is premature to adopt any digital carriage requirement at this time, DIRECTV strongly opposes any proposal to mandate digital signal carriage before the transition to digital broadcasting is complete and the broadcasters have ceased using the analog spectrum.

Finally, one commenter urges the Commission to expand the must carry obligation to include a full 19.4 megabit digital signal. Acknowledging that satellites have limited capacity to carry DTV signals, LTVS suggests that satellite carriers *must launch additional satellites* in order to allow broadcasters the use of a full 19.4 megabit digital signal.<sup>118</sup> LTVS argues that regardless of the time frame required for satellite carriers to launch new satellites, satellite

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<sup>116</sup> ALTV Comments at 50.

<sup>117</sup> NAB Comments at 22.

<sup>118</sup> LTVS Comments at 34.

carriers should nonetheless be required to carry digital signals immediately.<sup>119</sup> First and foremost, DIRECTV strongly opposes LTVS's ludicrous proposal to grant broadcasters full use of 19.4 megabit signals. DIRECTV reiterates that a requirement to carry multiple HDTV signals would pose extreme burdens on its system, and will dramatically decrease the number of markets in which DIRECTV provides local services as well as the programming options it makes available to its subscribers. Such effects are the opposite of what Congress intended in its enactment of the SHVIA. Indeed, there is no support, either in the text or the legislative history of the SHVIA to support such an onerous burden.

Perhaps even more reckless is LTVS's patently self-serving suggestion that satellite carriers should be required to carry digital signals in the top thirty markets by 2004.<sup>120</sup> For all other DMAs, LTVS proposes that satellite carriers be required to commence carriage of digital signals when analog broadcasts are terminated.<sup>121</sup> These absurd proposals are completely beyond the scope of the SHVIA. LTVS points to no statutory provision or legislative history to indicate that Congress intended any such obligation. To the contrary, Congress specifically refrained from attaching satellite carriers' obligations under Section 338 to specific markets. Congress instead chose to require carriage only in those markets in which the satellite carrier makes use of the compulsory copyright license.<sup>122</sup> The Commission should therefore wholly reject LTVS's proposal as it impermissibly expands satellite carriers' obligations under Section 338.

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<sup>119</sup> *Id.* at 35.

<sup>120</sup> *Id.* at 38.

<sup>121</sup> *Id.*

<sup>122</sup> *See* Notice at ¶ 3.

## **X. REMEDIES**

There appears to be broad consensus among the commenters that the complaint process contained in Section 338(a)(2) is limited to copyright matters and that the Commission is the proper forum for complaints associated with specific obligations set forth in Section 338(f)(1).<sup>123</sup> Complaints subject to the Commission's jurisdiction encompass signal quality, substantial duplication, channel positioning, and compensation for carriage. DIRECTV reiterates that Section 338(f)(1) implies that the Commission is the proper forum to for legitimate disputes that cannot be resolved by the parties, and broadcasters do not have the option to "forum shop" between the Commission and the courts.

## **XI. CONCLUSION**

The Commission must interpret the compulsory carriage obligation contained in Section 338 in a manner that is consistent with the procompetitive objectives of the SHVIA. While many commenters encourage the Commission simply to import cable regulations into the satellite context, it is clear that more deliberative implementation is required. While the Commission's framework for cable compulsory carriage may, in certain instances, be a useful point of reference, the record in this proceeding indicates that there are immense technical and statutory differences the Commission must take into account in crafting a framework for satellite compulsory carriage. The cable rules should be examined and adapted to the satellite context only to the extent that they achieve Congress' intent as expressed in the SHVIA and its legislative history.

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<sup>123</sup> NAB Comments at 22; Public Television Comments at 35.

As DIRECTV explained in its initial comments, three fundamental principles should guide the Commission in its implementation of the satellite compulsory carriage obligation. First, the Commission should allow satellite carriers maximum flexibility in meeting their requirements under Section 338. Second, the Commission should also recognize the unique problems that the requirement, as drafted by Congress, poses for satellite carriers. Third, the Commission should implement Section 338 in a manner that promotes administrative efficiency and certainty. In doing so, the Commission must dismiss any call to pour more feed into the must carry trough by rejecting the unwarranted imposition of additional broadcaster rights or satellite carrier burdens beyond those specified in the SHVIA. Consistent with these general principles, DIRECTV urges the Commission to adopt rules implementing the must carry requirement in a manner that incorporates DIRECTV's proposals set forth herein and in its initial comments.

Respectfully submitted,  
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